

1-775-13
Court File No.

FEDERAL COURT

BETWEEN:

HENDRIK TEPPER

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

May 6, 2013

Issued by: _____
Registry Officer

Address of local office: Ottawa, Ontario
K1A 0H9

TO: **Myles J. Kirvan**
Deputy Attorney General of Canada
234 Wellington Street
Ottawa, Ontario K1A 0H8
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**ELISE A. BENOIT
REGISTRY OFFICER
AGENTE DU GREFFE**

90 Sparks Street / 90, rue Sparks
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CLAIM

1. The Plaintiff Hendrik Tepper claims against the Defendant the Attorney General of Canada:
 - (i) General and special damages in the amount of \$15,000,000 on the basis of negligence, breach of fiduciary duty, and breach of sections 7 and 8 of the *Canadian Charter of Rights and Freedoms*;
 - (ii) aggravated damages in the amount of \$500,000;
 - (iii) punitive damages in the amount of \$1,000,000;
 - (iv) pre- and post-judgment interest in accordance with the *Federal Court Act*;
 - (v) the costs of this action on a substantial indemnity basis, including GST; and
 - (vi) such further and other relief as this Honourable Court may deem just and expedient.

OVERVIEW

2. Tepper is a Canadian citizen who resides in Drummond, New Brunswick. He owns and operates a potato farm and potato export business through his company Tobique Farms Ltd. ("Tobique Farms").
3. The Defendant Attorney General of Canada is named pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 as representative of the Government of Canada and all of its departments and agencies. All acts and omissions that are subject of the present claim were carried out by representatives or agents of different branches of the Government of Canada.

4. Tepper was jailed in Lebanon for over a year beginning in March 2011. For 373 days he was confined in an 18 by 40 foot cell with up to 28 inmates, in conditions of primitive sanitation, limited food and water supply and minimal contact with the outside world. He continuously feared for his life and his safety.
5. Tepper was detained while traveling as part of a mission with Potatoes Canada, a government funded trade organization, for the purpose of promoting the international sale of Canadian potatoes. His detention was triggered by an international criminal warrant or "Red Notice" issued by the International Criminal Police Organization ("INTERPOL") in May 2010 at the request of the government of Algeria. Algeria alleged that a shipment of potatoes organized by Tepper in 2007 included potatoes that were unfit for human consumption and that Tepper had falsified a Canadian food inspection certificate. These allegations were false.
6. The Red Notice was issued after the Royal Canadian Mounted Police provided information, including information about Tepper's personal and corporate assets, to Algeria in 2008 and 2009. The RCMP told Algeria that Tepper was unwilling to co-operate with an investigation, which was untrue. The supply of information by the Defendant to Algeria was contrary to Tepper's rights under the *Canadian Charter of Rights and Freedoms* and to the RCMP's own Operational Manual.
7. The Red Notice was issued on March 25, 2010, and the Defendant was advised of it by INTERPOL the next day. At no time prior to Tepper's departure on the trade mission for Potatoes Canada in March 2011 did the Defendant tell Tepper that the RCMP had provided information to Algeria or that INTERPOL had issued a Red Notice allowing for his detention and extradition to Algeria if he traveled abroad.
8. After Tepper was detained in Lebanon, he repeatedly sought the Defendant's assistance to obtain his release so that he could return to Canada and contest Algeria's allegations with the legal and procedural rights enjoyed by Canadian citizens. The Defendant did nothing to assist Tepper in obtaining his release,

and repeatedly denied that it could assist him, even though the Defendant could in fact have easily assisted him without breaching any law or legal obligation and even though the Defendant was advised by Lebanese authorities exactly how Tepper's release could be secured.

9. The Defendant is liable for negligence, breach of fiduciary duty, and breach of sections 7 and 8 of the *Charter* based on the Defendant's release of information about Tepper to Algeria, failure to notify him of the Red Notice against him, and failure to assist while he was detained in Lebanon. But for the violation of the Defendant's duties to Tepper, his year-long imprisonment would have been much shorter or would not have occurred at all.

TOBIQUE FARM'S 2007 POTATO SHIPMENT TO ALGERIA

10. In September 2007, Tobique Farms entered into a contract for the export of table potatoes to Algeria. The potatoes were purchased from a broker in Prince Edward Island who in turn contracted with a broker in Quebec.
11. Tobique Farms arranged for inspection and testing of the potatoes prior to shipment so that Phytosanitary Certificates could be obtained from the Canadian Food Inspection Agency ("CFIA"). The Algerian government prohibits the import of potatoes that contain certain bacteria, including bacterial ring rot ("BRR"). While BRR produces no toxins dangerous to human consumption as table potatoes, it can significantly reduce crop sizes if planted as seed potatoes.
12. The CFIA issued two Phytosanitary Certificates, one for 2200 metric tonnes and another for about 1330 metric tones of potatoes, attesting that the potatoes were free from BRR. These certificates were sent with the potatoes when they were shipped by boat to Algeria.
13. While the potatoes were *en route* to Algeria, the CFIA conducted further tests and concluded that some potatoes that had previously been cleared on the second Phytosanitary Certificate were suspect for BRR. The Algerian authorities were advised of the positive result on retesting around the time the ship carrying

the potatoes arrived in Algeria in October 2007. At the same time, the Algerian importer of the potatoes apparently falsified the second Certificate to show that a greater quantity of potatoes than originally indicated had passed the CFIA inspection.

14. Shortly after the ship carrying the Canadian potatoes began to unload, the Algerian government ordered it to halt. An inspection ordered by the Algerian importer showed that the potatoes were of good quality, and the importer obtained orders from two Algerian courts entitling him to unload the potatoes. Neither order was however approved by the Minister of Agriculture, apparently based on the fear that the potatoes would be used as seed potatoes rather than table potatoes.
15. The Algerian government ultimately refused to permit any further unloading, and the load of 3000 mt of potatoes that remained aboard was rerouted to Syria and eventually sold at a loss.
16. The Algerian importer who falsified the second Certificate was convicted of a criminal offence under Algerian law and sentenced to a lengthy prison term.
17. In February 2008, Tobique Farms sued the CFIA and the brokers who had supplied the potatoes for sale to Algeria for losses arising from the shipment as well as damage to Tobique Farms' reputation.

ALGERIA'S REQUEST FOR INFORMATION FROM THE RCMP

18. On September 21, 2008, the RCMP received a request from Algeria for information on Tepper. Algeria sought this information for the purpose of issuing a warrant for Tepper's arrest for attempting to import potatoes unfit for human consumption and for falsifying a Phytosanitary Certificate.
19. The RCMP's Operational Manual states that the disclosure of information to an agency of a foreign government that does not share Canada's respect for democratic or human rights may only be considered if it: (1) is justified because

of Canadian security or law-enforcement interest; (2) can be controlled by specific terms and conditions; and (3) does not have a negative human rights connotation.

20. Algeria is a country with a poor record of respect for democratic and human rights, and the sharing of information about Tepper did not serve any Canadian security or law-enforcement interest. Despite this, the RCMP responded positively and without reservation nor qualification to Algeria's request.
21. The RCMP advised Algeria that Tepper did not have a criminal record, but the annual sales of Tobique Farms were roughly \$4.1 million US annually, and that Tepper's personal residence was worth approximately \$575,000.
22. On April 15, 2009, Algeria made a further request for the RCMP's assistance. It asked the RCMP to obtain a statement from Tepper about Tobique Farms' 2007 potato shipment to Algeria. Again, responding to this request did not advance any Canadian law-enforcement or security interest, since Tepper was not and has never been subject to any criminal charge or investigation in Canada relating to the Tobique Farms 2007 export. Despite this, the RCMP again agreed to assist Algeria.
23. The RCMP contacted Tepper on May 5, 2009 requesting that he attend the Grand Falls RCMP detachment to provide a statement. Tepper was not told what the meeting was about. Tepper agreed to the interview but requested that his counsel be present.
24. After receiving Tepper's request to be accompanied by a lawyer, the RCMP chose not to proceed with the interview. It then advised Algeria that Tepper was not willing to cooperate with their investigation, which was untrue.
25. Given that there was not and has never been any criminal investigation or charge in Canada against Tobique Farms or Tepper as a result of the 2007 potato shipment to Algeria, and given that Canada has no extradition treaty with Algeria, it was reasonably foreseeable to the Defendant that the information provided by

the RCMP to Algeria was for the purpose of obtaining an INTERPOL Red Notice against Tepper so that he could be detained and extradited to Algeria if he traveled internationally.

26. Tepper's counsel first learned that the RCMP had provided Algeria with information about him on May 12, 2011, but neither Tepper nor his counsel learned exactly what was communicated until much later.

INTERPOL RED NOTICE ISSUED AGAINST TEPPER

27. On May 25, 2010, an INTERPOL Red Notice against Tepper was issued at the request of Algeria, based on an Algerian warrant for Tepper's arrest for allegedly importing potatoes unfit for human consumption to Algeria and falsifying the Phytosanitary Certificate that accompanied the shipment.
28. INTERPOL is a public international organization established by an agreement between the heads of national police forces. Algeria and Canada are both members of INTERPOL.
29. One of INTERPOL's primary functions is to issue Red Notices. A Red Notice is an alert issued by INTERPOL at the request of a member state, indicating that that the country has issued a domestic warrant and seeks an individual's provisional arrest with a view to extradition.
30. Once a Red Notice has been issued, there are only two meaningful ways to seek to have it lifted. An affected individual can petition the state which requested the Notice. This recourse is of limited value if the state is one like Algeria, whose criminal justice system does not provide guarantees of due process. The second is for the affected individual's home state to intervene to provide INTERPOL with information to contradict the facts alleged in support of the Notice and to support the individual's request to lift the Notice.
31. The RCMP became aware of the Red Notice against Tepper on May 26, 2010. The Defendant took no steps to advise Tepper of the Red Notice or to investigate whether the allegations on which it was based were true, even though the

allegation that Tobique Farms attempted to import food unfit for human consumption was self-evidently untrue because potatoes contaminated with BRR are safe to eat, and even though the Algerian importer involved with the 2007 export had been convicted of falsifying the second Phytosanitary Certificate.

THE 2011 TRADE MISSION TO LEBANON

32. On March 23, 2011, Tepper travelled to Lebanon to meet up with a representative of Potatoes Canada, a government-funded trade organization, for the purposes of promoting increasing sales of Canadian potatoes to Lebanon. Tepper's expenses for his trip were to be reimbursed by Potatoes Canada.
33. Upon his arrival at the Beirut airport, Tepper was detained, handcuffed and taken to the Adlieh Beirut Prison.
34. On March 24, 2011, Tepper was brought to the INTERPOL office in Beirut and shown the Red Notice against him. At that time, he was told that his detention was related to the 2007 potato shipment to Algeria.
35. After leaving the INTERPOL office, Tepper was placed in detention in a cell at the Beirut courthouse. Tepper occupied a common cell of roughly 18 by 40 feet, alongside approximately 11 to 34 other male inmates accused of crimes including murder, drug smuggling, and theft. Tepper's cell had no windows, no proper toilet, and at almost all times no hot water. The inmates were fed once a day from a communal pot of food. Tepper continuously feared for his physical safety and health while in detention.

CANADIAN GOVERNMENT'S FAILURE TO ASSIST TEPPER

36. During his detention and incarceration in Lebanon from March 2011 to March 2012, Tepper repeatedly sought assistance from the Defendant to obtain his release and return to Canada.

37. The Defendant refused to provide any assistance, despite its legal obligation to protect the rights of Canadian citizens and even though the Defendant could have easily secured Tepper's release at any point.
38. On being detained, Tepper immediately took steps to retain a lawyer and contact the Canadian embassy in Beirut to seek the Defendant's assistance in clarifying the basis for his arrest.
39. On March 30, 2011, a lawyer for the Department of Foreign Affairs and International Trade ("DFAIT") in Ottawa wrote to Tepper's lawyer. She said that, based on a visit from Canada's Head of Mission in Beirut to Tepper's jail, Tepper had "no complaints" about the conditions of his detention. She said that DFAIT would continue to provide consular assistance to Tepper but that the Defendant could not "interfere in the judicial affairs of another country, seek preferential treatment for a Canadian nor try to exempt an individual from the due process of local law".
40. In response to media interest in Tepper's detention in the following week, an internal memo within the Defendant's communications team referred to the ongoing lawsuit by Tobique Farms against Tepper, and identified the Algerian importer who had been convicted of falsifying the second Phytosanitary Certificate as Tepper's "partner".
41. On April 11, 2011, Tepper's lawyer wrote to DFAIT's counsel asking for the Defendant's assistance in obtaining information from INTERPOL about the basis of the Red Notice. In response, DFAIT suggested that Tepper's lawyer contact the RCMP directly.
42. On or around April 19, 2011, Tepper met with the Lebanese judge assigned to his case. The meeting was also attended by Nicolas Newhouse, a representative of the Canadian Embassy in Beirut, and Tepper's sister Harmien Dionne. This judge advised Tepper, Newhouse and Dionne that, to secure Tepper's release and return to Canada, he should file an application with INTERPOL requesting a review of his Red Notice, along with a letter of support from the Government of Canada. Tepper was informed that if he made a request accompanied by a letter

of support from the Defendant, the Lebanese authorities would release him within four hours of confirmation of the receipt of the request by INTERPOL.

43. Tepper accordingly asked Newhouse to provide a letter of support to be filed with his application for a review of the Red Notice.
44. In response to this request, a internal DFAIT memo dated April 20, 2011 stated that the requested letter "is not within our purview or the scope of consular assistance, and is not something we can do". The reason for the inability of DFAIT to provide the letter was not indicated. There was no explication of how providing the requested letter would lead the Defendant to "interfere in the judicial affairs of another country, seek preferential treatment for a Canadian nor try to exempt an individual from the due process of local law".
45. The author of the memo also expressed the view that INTERPOL would "likely" have no role in enforcing or preventing Tepper's extradition to Algeria, even though the only basis for Tepper's detention in Lebanon and impending extradition to Algeria was the INTERPOL Red Notice.
46. On April 29, 2011, Tepper's lawyer applied to INTERPOL's headquarters in France to suspend the Red Notice against Tepper. Tepper had been advised that this request had little chance of success without a letter of support from the Defendant, but he proceeded without it because the Lebanese authorities told him that his extradition to Algeria could not be delayed much longer.
47. On May 3, 2011, Newhouse had a discussion with Tepper's Lebanese counsel. Tepper's counsel advised that Tepper's representative in Algeria had been approached by the Algerian government, who suggested that Algeria would be willing to abandon any criminal prosecution in exchange for a large monetary payment by Tepper. Tepper refused this offer on the basis that he had done nothing wrong.

48. By letter on May 4, 2011 to DFAIT, Tepper's counsel again requested a letter from the Defendant to INTERPOL requesting that the Red Notice be lifted and Tepper be allowed to return to Canada.
49. At around this same date, Tepper's counsel provided DFAIT with a statement by Tepper with respect to the conditions in the jail where he had now spent 6 weeks. His account contradicted Newhouse's assertion that Tepper had "no complaints". The cell was occupied by between 8 and 28 men at any given time. The toilet facilities consisted of a 4-inch hole in the ground, the prisoners were provided with no toilet paper and no soap, water was only available through a pipe in the wall and hot water was usually not available. The jail had no heat or air conditioning, sunlight, furniture, radio or other amenities. Food which smelled "awful" was supplied in a communal pot once a day. The jail was infested with rats, flies, cockroaches and spiders. Some detainees were there on INTERPOL warrants while the remaining men were arrested on a variety of criminal charges. Tepper had not been able to wash his clothes since his arrival. He had a rash, daily headaches, backache and soreness.
50. On May 12, 2011, DFAIT's counsel responded to the May 4 letter from Tepper's counsel. She referred to the ongoing lawsuit by Tobique Farms against the CFIA, and said that whether the allegations by Algeria were the proper basis for a warrant or a Red Notice was "not a proper subject for comment by the Government of Canada". She also disclosed to Tepper for the first time that the RCMP had assisted Algeria with its investigation of the charges against Tepper.
51. On May 13, 2011, Tepper's counsel wrote to DFAIT's counsel asking for expedited disclosure of the records of the CFIA, RCMP and DFAIT regarding Tepper, and noting disappointment in the Defendant's response to his requests for assistance.
52. On May 25, 2011, DFAIT's lawyer responded to the May 13 letter from Tepper's lawyer, asserting that Tepper had received "exceptional" consular assistance since his detention and that DFAIT "has no control over conditions in detention centers abroad".

53. Over the course of Tepper's detention, he and his family members wrote approximately 50 letters to various representatives of the Defendant requesting that it petition INTERPOL to lift the Red Notice. All of these requests for assistance were refused.
54. On October 3, 2011, Tepper's lawyer received a letter from INTERPOL rejecting Tepper's request to remove the Red Notice. The letter stated that INTERPOL could not check the accuracy of facts as provided by the Algerian authorities, but could only recommend that a Notice be deleted if the facts on which it was issued was contradicted by other information.
55. As suggested by INTERPOL's response, and contrary to the position taken by the Defendant, a letter of support for Tepper to INTERPOL would have violated no domestic or international laws or customs. In fact such support is provided by other states to assist nationals detained on Red Notices based on improper, inaccurate or insufficient allegations by a requesting state.
56. Tepper advised the Defendant of INTERPOL's decision and of the inaccuracy of the allegations on which the Red Notice was issued. Despite this, the Defendant refused to take any steps in response to INTERPOL's decision.
57. In early December 2011, Tepper's lawyer was advised by the Lebanese authorities that Tepper's detention was now considered a political as opposed to a legal matter. Tepper's lawyer was told that, in light of this, the Defendant could send a letter to the Minister of Justice in support of Tepper's release and that such a request would result in Tepper's release despite the continued existence of the Red Notice.
58. On December 13, 2011, Tepper's lawyer contacted the Defendant requesting that the Defendant write a letter to the Lebanese Minister of Justice seeking Tepper's return to Canada, and provided a template for such a letter based on the advice received from the Lebanese authorities.

59. The Defendant did not agree to this request and did not send a letter to the Lebanese government in support of Tepper's return to Canada. As a result Tepper remained in jail through Christmas 2011 and into 2012.

RELEASE FROM DETENTION

60. Tepper was released from Lebanese custody and returned to Canada on March 31, 2012 after 373 days in detention. Tepper was released as a result of a Lebanese presidential decree. The Defendant played no role in securing or facilitating his release.
61. No civil or criminal charges are pending against Tepper in Canada.
62. To Tepper's knowledge, the INTERPOL Red Notice against him remains in effect and he is unable to travel abroad for fear that he will be detained again.
63. As a result of his lengthy detention, Tepper's business is in financial ruin and his health has suffered.

BREACH OF DUTY OF CARE TO SUBJECT OF A CRIMINAL INVESTIGATION

64. The Defendant owed a duty of care to Tepper as a suspect of a foreign criminal investigation to assist with the investigation in a reasonably competent manner, which includes observing all applicable policies and laws.
65. Without limiting the generality of the foregoing, Tepper states that the Defendant breached its duty of care and was negligent in the following respects:
 - (a) the Algerian authorities who requested the RCMP's assistance were not "approved foreign authorities" within the meaning of the RCMP Operational Manual for the purposes of sharing information, and the sharing of information with Algeria violated the Manual;

- (b) the RCMP failed to consider the reason why the Algerian authorities were requesting the information, the nature of the investigation, and how the authorities might use the information;
 - (c) the RCMP provided sensitive personal information to an agency that was not on a “need to know” basis;
 - (d) the RCMP failed to consider its responsibilities under the *Privacy Act* and, as such, it disclosed information contrary to section 8(2) of the *Privacy Act*;
 - (e) the RCMP failed to consider Algeria’s human rights record prior to disclosing information about Tepper; and
 - (f) the RCMP falsely advised Algeria that Tepper had refused to cooperate with its investigation, when in fact Tepper had agreed to give a statement on the condition that his lawyer was present.
66. It was reasonably foreseeable that the negligent handling of Algeria’s request for information and assistance from the Defendant could result in the issuance of a criminal warrant against Tepper in Algeria and a request for the issuance of a Red Notice based on this warrant.
67. It was also reasonably foreseeable that, given Tepper’s international marketing and sales activities in the Middle East and elsewhere, Tepper would be detained with the threat of extradition to Algeria once a Red Notice was issued.
68. Algeria is a country whose justice system has repeatedly been criticized by international organizations and governments as falling well below international standards. There are numerous publicly available reports from highly credible sources such as the United States Department of State, Amnesty International, and Human Rights Watch, all of which confirm the risk of abuse and torture for prisoners in Algeria.

69. The Defendant was aware of these reports at the time that Algeria requested its assistance and at the time it shared information with the Algerian authorities. The Defendant knew or ought to have known that an Algerian warrant for Tepper's arrest would risk him being extradited to Algeria with the possibility of lengthy imprisonment under abusive conditions.
70. But for the Defendant's sharing of information about Tepper, including personal information about his financial resources and false information about Tepper's willingness to co-operate with an investigation, the Algerian authorities would not have proceeded with its investigation or with the issuance of the Red Notice. Accordingly, but for the Defendant's sharing of Tepper's personal information, Tepper would not have been detained in Lebanon on the basis of a Red Notice.

FAILURE TO WARN AND BREACH OF DUTY OF CARE

71. The Defendant had a duty of care to warn Tepper about the Red Notice against him prior to his travel to Lebanon.
72. The Defendant is liable for breach of its duty of care to Tepper on the basis that:
 - (a) Tepper was part of a trade mission to Lebanon that was funded by the Defendant;
 - (b) Tepper's participation in the trade mission created a special or proximate relationship between the Defendant and Tepper that gave rise to a *prima facie* duty of care; and
 - (c) it was reasonably foreseeable that the failure to notify Tepper of the Red Notice prior to his departure for Lebanon would likely result in his detention and/or extradition to Algeria.
73. Had the Defendant warned Tepper of the Red Notice, Tepper would not have traveled to Lebanon and would not have been imprisoned.
74. The Defendant is liable for damages suffered by Tepper during and as a result of his detention in Lebanon.

BREACH OF FIDUCIARY DUTY

75. The Defendant owed a fiduciary duty to Tepper as a Canadian citizen detained in a foreign country and at risk of being treated in a manner that violated his fundamental rights protected by Canadian and international law. The fiduciary duty entailed taking all reasonable steps within the Defendant's means to secure Tepper's release from an incarceration in substandard and dangerous conditions and the risk of extradition to a country with a poor human rights record and little or no respect for the rights of the accused.
76. The Defendant is liable for breach of fiduciary duty based on the facts set out in this claim, including:
 - (a) the Defendant's failure to take reasonable steps to petition INTERPOL for Tepper's release from detention; and
 - (b) the Defendant's failure to take reasonable steps to make requests to the Lebanese authorities for Tepper's release from detention.
77. Had the Defendant taken the steps requested by Tepper and the Lebanese authorities, Tepper would have been released from detention and allowed to return to Canada as early as April 2011, and so avoided almost a further year in jail.

BREACH OF SECTION 7 OF THE CHARTER

78. Pursuant to section 7 of the *Canadian Charter of Rights and Freedoms*, the Defendant had a duty not to deprive Tepper of his liberty or security of the person, except in accordance with the principles of fundamental justice.
79. Tepper's right to liberty and security of the person was engaged when he requested that the Defendant take reasonable steps to secure his release from detention in April 2011.

80. In the particular circumstances of this case, there was a sufficient causal connection between the Defendant's inaction and the prolonged deprivation of Tepper's liberty. But for Canada's failure to petition INTERPOL and the Lebanese authorities, Tepper would have been released from detention as early as April 2011 and certainly before the end of March 2012.
81. Pursuant to INTERPOL's procedures, the only effective method of cancelling the Red Notice against Tepper was for the Defendant to support Tepper's request to lift the Notice.
82. It was within the scope of the Defendant's role and ability to write a letter to INTERPOL in support of Tepper's request for review. Tepper informed the Defendant that if INTERPOL received a letter of support from the Government of Canada, the Lebanese authorities would agree to release him within four hours of INTERPOL receiving this letter. There was no law or international legal obligation preventing the Defendant from taking this step.
83. As of December 2011, the Defendant could also have secured Tepper's release by sending a letter to the Lebanese authorities seeking Tepper's return to Canada. Again, this would have violated no law or international legal obligation.
84. The Defendant's failure to take reasonable steps to secure Tepper's release from detention violated the principles of fundamental justice and Tepper's rights under section 7 of the *Charter*. Given the nature of the INTERPOL Red Notice regime, Tepper required the Defendant's assistance to challenge the Notice against him. By failing to intervene, the Defendant violated Tepper's right to make full answer and defence. Moreover, the Defendant's inaction violated the principles of fundamental justice and section 7 of the *Charter* insofar as Tepper's continued detention, which threat of extradition to Algeria, would have shocked the conscience of reasonable Canadians.

BREACH OF SECTION 8 OF THE CHARTER

85. Section 8 of the Canadian *Charter* provides a right against unreasonable search and seizure. This protects each Canadian citizen's reasonable expectation of privacy against intrusion by the state.
86. Tepper reasonably expected that:
 - (a) the Defendant would not provide information to Algeria, including information about his personal and business assets, in furtherance of an investigation on charges that were not being pursued in Canada;
 - (b) the Defendant would not provide information to a foreign government in contravention of its own policies on information-sharing with a state that does not share Canada's commitment to human rights and justice; and
 - (c) would not misrepresent Tepper's willingness to co-operate with a police investigation into his activities.
87. Based on Algeria's proposal that Tepper resolve the criminal charges against him through payment of a monetary settlement as set out in paragraph 47 above, at least part of Algeria's motive in issuing a criminal warrant and requesting a Red Notice against Tepper was financial.
88. The Defendant should have questioned what Algeria would do with financial information, given Algeria's international reputation as a state with a poor human rights record and given that Tepper's corporate and personal assets had nothing to do with the pursuit of criminal charges against him.
89. Had it not been for the Defendant's release of information to Algeria, it would not have requested the Red Notice and Tepper would not have suffered a year-long imprisonment in Lebanon.

90. The Defendant's release of information, including inaccurate information, to Algeria violated Tepper's fundamental rights under section 8 of the *Charter*.

DAMAGES

91. As a result of the wrongful actions of the Defendant, Tepper suffered and continues to suffer general and special damages, including:

- (a) loss of income, including past and future income;
- (b) emotional and psychological distress;
- (c) harm to his family life;
- (d) loss of enjoyment of life;
- (e) damage to his personal reputation
- (f) expenses to alleviate the conditions of his detention in Lebanon
- (g) legal expenses; and
- (f) moral damages.

PUNITIVE AND AGGRAVATED DAMAGES

92. The Defendant acted in bad faith and in a high-handed, malicious, arbitrary and reprehensible manner before and during Tepper's detention in Lebanon. The Defendant's conduct constitutes a marked departure from the ordinary standards of decent behaviour and interfered with one of Tepper's most fundamental rights as a human being, the right to liberty and security of the person.
93. The involvement of the Canadian government in the wrongful detention of a Canadian citizen abroad is conduct that must be condemned by way of punitive damages. The Defendant blatantly disregarded the repeated requests of Tepper, his family members, his legal counsel and the Lebanese authorities for assistance in securing Tepper's release and return to Canada. The Defendant acted in bad faith by assisting a foreign government in wrongfully depriving

Tepper of his liberty and then refusing to investigate how it could have secured his release.

94. Tepper claims aggravated and punitive damages against the Defendant in the amount of \$1,500,000.
95. Tepper pleads and relies upon the *Negligence Act*, R.S.O. 1990, C. N.1, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.
96. Tepper proposes that this action be tried at Ottawa, Ontario.

Dated this 6th day of May, 2013.

Norton Rose Canada LLP
NORTON ROSE CANADA LLP
Barristers & Solicitors
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Sally Gomery
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Solicitors for Hendrik Tepper

I HEREBY CERTIFY that the above document is a true copy of
the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme
à l'original déposé au dossier de la Cour fédérale.

Filing date 6. May - 2013
Date de dépôt

Dated 6. May - 2013
Fait le

ELISE A. BOENOIT
REGISTRY OFFICER
AGENTE DU GREFFE

10:46

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 de	
for William F. Pentney	
pour Deputy Minister of Justice	
and Deputy Attorney General of Canada	
Sous-Ministre de la Justice	
et Sous-procureur général du Canada	